* **HIGH COURT OF DELHI : NEW DELHI**

\+ **OMP No. 4/2007**

Judgment reserved on: January 9, 2007

% Judgment delivered on: February 01, 2007

Subhash Chander Chachra & Others ..... Petitioners
Through: Mr. Dushyant Dave, Sr.Advocate with Mr.H.S.Chandhoke, Mr. Ritesh Kumar, Mr.Manu Krishnan & Mr. Bharat Singh, Advocates

versus

Ashwani Kumar Chachra & Another ..... Respondents
Through: Mr.Neeraj Kishan Kaul, Sr. Advocate with Mr. Suresh Dutt Dobhal, Ms. Nandini Gidwaney, Mr. Rishi Jain & Mr. Biju Nair, Advocates

CORAM

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. Present is an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (the Act) directed against the order dated November 16, 2006 passed by the Arbitral Tribunal on an application i.e. IA – C/4, filed by the claimants (Respondent herein) under Section

17 of the Act. The application IA - C/4 was filed for interim relief on which the Arbitral Tribunal has issued interim directions to the appellants to release an amount of Rs.1 crore to the respondents in four equal installments of Rs.25,00,000/- each in four months being in the first week of December, 2006 and to pay interest to the respondents on their balance amount of capital reflected in the final amounts as on 31.3.2005 @ 18% per annum. The appellants herein are respondents before the Arbitral Tribunal.

2. Disputes are essentially between two families. Appellant Subhash Chander Chachra is the elder brother while the respondent Sh. Ashwani Kumar Chachra is the younger brother. The brothers along with their family members were carrying on business jointly. The two families led by the two brothers consisted of the following members :

1. **Mr. Subhash Chander Chachra**
   Ms. Saroj Chachra (wife)
   Mr. Deven Chachra (son)
   Ms. Yogita (daughter)

   They are collectively referred to herein as the Appellants

2. **Mr. Ashwani Kumar Chachra**
   Ms. Madhu Chachra (wife)
   Ms. Ruchita (daughter)"

   They are collectively referred to herein as the Respondents

3. The parties constituted three partnership firms, details whereof

are as follows :

FIRMS		**SHARE (%)**
M/s. SUPERIOR CRAFTS		
1.	Mr. Ashwani Kumar Chachra -	50%
2.	Mr. Subhash Chander Chachra -	50%
M/s. SUPERIOR CRAFTS (INDIA)		
1.	Mr. Ashwani Kumar Chachra -	55%
2.	Ms. Saroj Chachra (W/o MR. Subhash Chander Chachra) -	45%
M/s. SUPREME EXPORTS (INDIA)		
1.	Ms. Madhu Chachra (W/o Mr. Ashwani Kumar Chachra) -	45%
2.	Mr. Subhash Chander Chachra -	55%"

4. Disputes arose between the partners which lead to filing of three applications under Section 9 & 11 of the Act registered as OMP No. 262/2005, 263/2005 and 290/2005 in this Court. They were disposed of on 16th January, 2006 leading to the constitution of the Arbitral Tribunal. It appears that a company petition relating to M/s. Superior Crafts Private Ltd., a family concern of the parties was also pending before the Company Law Board. On 20th February, 2006, the parties agreed to withdraw the Company Petition from the Company Law Board and to raise all the disputes in that petition before the Arbitral Tribunal. The Arbitral Tribunal is therefore ceased of all the disputes arising between the parties in relation to the three partnership concerns as well as their closely held company, namely,

Superior Crafts Private Ltd.

5. As recorded by the Learned Arbitral Tribunal, it is not seriously disputed that differences between the parties arose sometime in 2004-05. While advancing his arguments, learned senior counsel for the appellant Sh. Dushyant Dave also stated that dispute between the parties arose in July, 2005. It is also not in dispute that the appellant herein took control of the business of all the three partnership firms, namely, M/s. Superior Crafts, Superior Craft (India) and M/s. Supreme Export (India) as also the company M/s. Superior Crafts Private Ltd. Resultantly since July, 2005, the respondents have not received any payments and no withdrawls were allowed to them while the appellants continued to run and manage the businesses of dealing in garments locally as well as overseas.

6. Having been ousted from the business, respondents preferred OMP No. 262/2005 and 263/2005 under Section 9 & 11 of the Act, while appellant no. 2 Smt. Saroj Chachara, wife of appellant no. 1 herein preferred OMP No. 290/2005 in this Court. These proceedings are collectively referred to as the "earlier proceedings".

7. Grievance raised in the earlier proceedings by the respondents was that the business of the partnership firms was diverted to the company, namely, M/s. Superior Crafts Private Ltd. The assets and funds of the partnership firms had also been siphoned of and transferred to the said company which was under the

management and control of the appellants. Respondents sought interim measures of protection. Further grievance of the respondents was that after taking over the entire working of the firms, the appellants were withdrawing large sums of money in cash or through false expenses in books. All accounts in the banks were cleaned up regularly by the appellants and no money is left in the bank accounts of the firm. It was being done to minimise the profits in order not to share the profits with the respondents.

8. It appears that there is not much dispute about the fact that the businesses of the three partnership firms were in fact transferred to M/s. Superior Crafts Private Ltd. While it is the case of the appellants that the said transfer of business was with the consent of the respondents, this position is denied by the respondents. In its order dated 16th January, 2006, this Court after discussing the facts brought on record by the parties observed: *"From the aforesaid submissions and material on record the admitted position is that the assets of the partnership firm are being utilised by the company. It also cannot be disputed that though the petitioner has 50% shareholding in the partnership firm, the shareholding of the petitioner and his family members is 30%.... Therefore, due to this diversion, if not permissible, the petitioner may suffer. It also cannot be denied that normally, without the consent of the partners, there could not have been diversion of the partnership business into the company."*

9. Since the appellants disputed that the diversion of business was unilateral and contended that it was consensual, the Court left this aspect to be decided by the Arbitral Tribunal. In order to ensure that during the Arbitral proceedings the properties of the partnership firms are not allowed to be wasted and the appellants do not act in a manner which prejudicially affect the respondents in case respondent ultimately succeeds in the arbitration, this court after discussing the various interim protections granted to the respondent in different proceedings, held as follows:

> "By this order I have not approved the diversion of partnership business, assets and workers to the company. I have left to the learned arbitrator to take holistic view of the matter and give further directions and pass any appropriate orders or interim award, including under Section 17 of the Act. The whole idea is to protect the interest of the petitioner and at the same time to ensure that before the matter is thrashed out, the respondent or the company's interest also does not suffer in the process."

10. In the aforesaid background, respondents moved the Arbitral Tribunal by filing IA - C/4 being an application under Section 17 of the Act. Respondents sought directions/interim relief to withdraw 50% of their capital and share of profits in the three partnership firms and the family held company namely, M/s. Superior Crafts Private Ltd.

11. The Arbitral Tribunal, after considering the facts and record, passed the following interim directions :

> "In view of the above said state of affairs and, in particular, keeping in view the fact that the Claimants are out of control of business, it

will be reasonable to grant them some interim relief. Mr. Mata, the Ld. Senior Counsel for the Claimants, during the course of hearing, pressed the claim of the Claimants at this stage being confined to permitting withdrawal to the extent of Rs.1 crore and being allowed interest on the balance left in the capital accounts @ 18% per annum in the light of Clause 10 of the partnership deeds, in respect of the partnership firms.

It is hereby directed as under:-

(i) The Respondents no.1 and 2 shall release an amount of Rs.1 crore to the Claimants in four equal installments of Rs.25,00,000/- each, payable in the first week of every next four calender months, beginning with first week of December 2006;

(ii) On the balance amount of capital as reflected in the final accounts on 31.03.2005, the Claimants shall be paid interest by the Respondents calculated @ 18% per annum.

(iii) The amount so paid shall be available for adjustment consistently with the final award.

The above said is only an interim order based on considerations which appear prima-facie and is not in any manner intended to be a reflection or expression of opinion on the merits of the case..”

12. Learned counsel for the appellant assails the order dated 16th November, 2006 passed by the Arbitral Tribunal, primarily, on the ground that the said order is contrary to Section 48 of the Indian Partnership Act. The submission is that the claim before the Arbitral

Tribunal is for dissolution of the partnership businesses between the parties and unless the accounts are taken and all the debts and liabilities of the firms are settled, no partner can take priority in respect of his claims. He further submits that the interim directions issued by the Arbitral Tribunal, in fact, tantamount to partially granting final relief. He submits that before the Arbitral Tribunal, the certificate issued by the Chartered Accountants M/s. Ashok Jain Aggarwal and Company was filed which stated that as on 30th September, 2006, the total liabilities of the three partnership firms and the company M/s. Superior Crafts Private Limited was over Rs. 50 crores. Learned counsel further submits that until and unless accounts are taken, the debts and liabilities as indicated above are settled, no direction could have been issued to the appellants to pay a sum of Rs.1 crore to the respondents and to order the grant of interest at the rate of 18% per annum on the capital of the respondents invested in the said partnership firms. It was also argued that the claim for interest @ 18% per annum on the capital of the respondents invested in the said partnership firms had not even been made by the respondents, yet the same has allowed by the Arbitral Tribunal. By passing the interim direction, the Arbitral Tribunal had partially granted to the respondents what they had claimed as a final relief. He also relied upon ***Addanki Narayanappa & Another Vs. Bhaskara Krishnappa (dead) and thereafter his heirs & others AIR 1966 SC 1300, Mt. Nag Kuer***

Vs. Sham Lal Sahu & others AIR 1925 P.C. 257, and ***S.V. Chandra Pandian & others Vs. Sivalinga Nadar & others (1993)1 SCC 589.***

13. To butteress the argument that the claim before the Arbitral Tribunal was for the dissolution of the partnership firms, learned counsel for the appellant referred to various observations of the Arbitral Tribunal.

14. On the other hand, learned Senior counsel for the respondents Mr. Neeraj Kaul, who appeared on Caveat, at the threshold submitted that the scope of interference by this Court, with the interim directions issued by the Arbitral Tribunal is limited. He submitted that if the view taken by the Arbitral Tribunal is a possible view, the same should not be interfered with by the Court. Even if an error is committed by the Arbitral Tribunal while acting with in its jurisdiction, the Court should not interfere with the directions issued by the Arbitral Tribunal. In support of his aforesaid submissions, learned counsel for the respondent relied on ***Aeroson International Limited Vs. Union of India and Anrs***. (1999) 9 SSC 449, ***Bharat Cocking Coal Limited Vs. Annapurna Construction*** (2003)8 SSC 154 and ***Indu Engineering and Textiles Limited Vs. Delhi Development Authority*** (2001)5 SSC 691.

15. He further submitted that the claim before the Arbitral Tribunal made by the respondents was not a claim for dissolution of

partnership firms. In fact it was the appellants who had argued before the Tribunal that the claim made by the respondents should be treated as a claim for dissolution of the partnership firms. Learned counsel for the respondent further submits that bare perusal of the claims made by the respondents before the Arbitral Tribunal would show that the respondents have never sought dissolution of the partnership firms or the corporate entity Superior Crafts Private Limited. He referred to Clause (a) of claim no.1, whereby the respondents had claimed 50% beneficial interest and/or ownership right in the businesses of the three partnership firms and the corporate entity viz. Superior Crafts Private Limited. He further submits that the partnership firms had never been dissolved and no dissolution had been sought by either party. He submitted that the appellants for the first time, in their reply to the statement of claims filed before the Arbitral Tribunal stated that the Arbitral Tribunal may treat the claimant's notice dated 26th July, 2005 invoking the Arbitration Clause as a notice of dissolution in respect of the firms M/s. Superior Crafts and M/s. Supreme Export (India) and that the notice dated 8th August, 2005 of the appellants in respect of the partnership firm Superior Crafts (India) may be treated as a notice of dissolution of the said firm. In the alternative, the appellants requested the Arbitral Tribunal to treat their reply to the statement of claim as a notice of dissolution of partnership firms. Learned counsel submitted that the so-called notices of dissolution did not have the

effect of dissolving the partnership firms. He further submitted that the appellants have not sought any relief before the Arbitral Tribunal for dissolution of the partnership firms. He placed reliance on the judgment reported as ***Banarasi Das Vs. Kanshi Ram, AIR 1963 Supreme Court 1165*** and on the decision of the High Court of Bombay in ***Dhulia-Amalner Motor Transport Limited Vs. Raychand Roopsi Dharamsi and Ors. AIR 1952 Bom. 337.***

16***.*** He strongly relied upon the admitted position recorded by this Court in its order dated 16th January, 2006 that the assets of the partnership firms were being utilized by the company Superior Crafts Private Limited and also to the observations made by this Court that the Arbitral Tribunal should take a holistic view of the matter while issuing further directions, including under Section 17 of the Act. He submits that the Arbitral Tribunal has taken a holistic view while issuing the interim direction under challenge. The Tribunal had noticed that in the year 2004-05 the total sales were to the tune of Rs.60 crores while the profits had gradually risen to more than 3 crores in the year 2002-03 and stood at Rs.1.13 crores in the year 2003-04. These figures did not include the profits of Superior Crafts Private Limited. The capital accounts for the year ending 31.3.2005 of the firm Superior Crafts showed that the capital invested by the appellant no. 1 was Rs.1,75,94,920/- while that invested by respondent no. 1 was Rs.3,40,42,976/-. This shows that even though the profits of this firm

were agreed to be shared equally, the capital investment of the respondent no. 1, Ashwani Kumar Chachra, was nearly twice as much as that of appellant no.1. In M/s. Superior Craft (India) while appellant no. 2 had withdrawn an amount of Rs.28,95,849/- in the year 2004-05, the withdrawals of respondent no. 1 was a meager amount of Rs.4,76,109/-. In M/s. Supreme Exports (India) as on 31.3.2005, the capital account of appellant no. 1 stood at Rs.54,40,071/- while that of respondent no.2 was Rs.33,87,057/-.

17. Learned counsel for the respondents submitted that taking into account the aforesaid position with regard to capital investments and withdrawals made by the appellants and the respondents respectively, the Arbitral Tribunal had on equitable consideration directed payment of the amount of Rs. 1 crore to the respondents apart from granting interest on the capital investment at the rate of 18% per annum, particularly, in view of the fact that the respondents were completely ousted from the business which had been transferred to M/s. Superior Crafts Private Limited. It was further submitted that while it was recorded in the order passed by this Court on 16th January, 2006 that the shareholding of the respondents in the said company was to the tune of 30%, the appellants were now contending that the shareholding of the respondent was only 2%. This further showed the intent of the appellants to deprive the respondents of their fair share in the businesses being run in partnership as well as through their closely

held company.

18. In his rejoinder, learned counsel for the appellant submitted that the respondents had made a claim for a liquidated amount, which itself amounted to a claim for dissolution of the partnership firms and the respondents were not right in now contending that they were not claiming dissolution of the partnership firms.

19. In my opinion, the issue raised by the parties with regard to the fact whether the three partnership firms stand dissolved or not, or, whether the claim before the Arbitral Tribunal is for dissolution of the partnership firms and businesses or not, are issues which are to be determined by the arbitral tribunal and it is not necessary for me, at this stage even to take a prima facie view on these issues, since, in my opinion they are not relevant to decide the present appeal. This is so because, in my opinion, the argument of the appellants based on Sections 48 and 46 of The Indian Partnership Act, 1932, is itself misplaced. Even if it were to be assumed that, in fact, the respondents had sought dissolution of the partnership firms and businesses, in my view the said provisions of The Indian Partnership Act, 1932 do not come in the way of the Arbitral Tribunal in issuing interim direction of the kind that it did.

20. Section 48 of The Indian Partnership Act, 1932 states that in settling the accounts of a firm after dissolution, various claims are to

be settled in the order of priority as detailed therein. The settlement of accounts of the firm after dissolution dealt with in Section 48 is the final settlement of accounts between the parties.

21. In ***Saligram Ruplal Khanna and another Vs. Kanwar Rajnath, AIR 1974 SC 1094,*** the Hon'ble Supreme Court held that even after dissolution of a partnership firm, the mutual rights and obligations of the partners continue, notwithstanding the dissolution in so far as it is necessary to wind up affairs of the firm and to complete the transaction begun, but unfinished at the time of dissolution. This is so provided in Section 47 of The Indian Partnership Act, 1932. While dealing with Section 47 of The Indian Partnership Act, 1932, the Hon'ble Supreme Court held that the word “transaction” in Section 47 refers not merely to commercial transaction of purchase and sale but would include also all other matters relating to the affairs of the partnership. The Hon'ble Supreme Court held as follows :-

> “The proposition, in our opinion, cannot be disputed that after dissolution, the partnership subsists merely for the purpose of completing pending transactions, winding up the business, and adjusting the rights of the partners; and for these purposes, and these only, the authority, rights and obligations of the partners continue.” (emphasis added)

22. In my view, merely because a partnership firm has been dissolved, it does not preclude the erstwhile partners from dealing with the partnership assets, or withdrawing from the bank accounts held in the name of the partnership firm before the final settlement of

accounts takes place under Section 48 of The Indian Partnership Act, 1932.

23. The question that arises for consideration is; Has the Arbitral Tribunal, while passing the interim directions, proceeded under Section 48 of The Indian Partnership Act, 1932?

24. In my opinion, the answer is plainly in the negative. The stage for settlement of accounts has not yet arrived. The arbitration proceedings are still at a preliminary stage. If at the stage of settling the final accounts the priority set out in Section 48 for settlement of debts, liabilities and claims were to be ignored or breached, then certainly it could be questioned, but that is not the case here. The interim direction issued by the Arbitral Tribunal for payment of Rs.1 crore to the respondents, does not tantamount to "*paying to each partner rateably what is due to him from the firm for advances as distinct from capital"* or "*paying to each partner rateably assets due to him on account of capital"* or "*dividing the residue among the partners in proportion in which they were entitled to share profits.*"

25. Mere direction to make payment of Rs.1 crore under an interim direction to the respondents does not and cannot be taken to mean that the rights of the partners are being finally determined. Each partner in the partnership firms would continue to be liable in respect of debts and liabilities owed to third parties to the fullest extent, for the debts and liabilities incurred prior to dissolution, and, subject to Section

47 of the Indian Partnership Act, 1932, in respect of liabilities incurred even thereafter. Therefore, merely to say that there are outstanding liabilities to the tune of Rs.50 crore owed by the three partnership firms and the closely held private limited company is neither here nor there. The amount directed to be paid to the Respondents would also be adjustable at the time of final settlement of accounts.

26. The decisions relied upon by the appellants also, to my mind, do not apply in the facts of the present case. ***Addanki Narayanappa*** (supra) lays down the general principal that a partnership firm has no legal existence, the partnership property vests in all the partners and in that sense every partner has a interest in the property of the partnership firm. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. He cannot assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remains after satisfying the liabilities set out in Clause (a) and sub-Clauses (i), (ii) and (iii) of Clause (b) of Section 48. It sets out the passage from the Lindley on Partnership which states: "*what is meant by the share of a partner is his proportion of the partnership assets after they had been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged.*" It also refers to a Full

Bench decision in ***Ajudhia Pershad Ram Pershad VS. Sham Sunder AIR 1947 Lahore 13*** which inter alia states " It is obvious that the Act contemplates complete liquidation of the assets of the partnership as a preliminary to the settlement of the accounts between the partners upon dissolution of the firm and it will, therefore, be correct to say that, for the purposes of the Indian Partnership Act, and irrespective of any mutual agreement between the partners, the share of each partner is, in the words of Lindley: *"his proportion of the partnership assets after they had been all realised and converted into money, and all partnership debts and liabilities have been paid and discharged."*

27. As aforesaid, the Arbitral Tribunal has not yet determined the share of the partners of either of the three firms before it. Moreover, the settlement of accounts between the partners is yet to take place. What has been directed to be paid by the Arbitral Tribunal to the respondents is not their determined share. It is an amount determined by the Arbitral Tribunal on equitable considerations taking into account the earnings, profitability and capital investments made by the partners in the three partnership firms and also the fact that the respondents have been completely ousted from business by the appellants. It is an order passed to equitably, but not finally adjust the rights of the partners.

28. ***Mr. Nag Kuer*** (supra) was a case where the Privy Counsel

was dealing with a final decree passed by a Court. The Privy Counsel found that the distribution of assets was improper and not in accordance with the law.

29. ***S. V. Chandra Pandian*** (supra) was a case where once again the Supreme Court laid down the general principles applicable to dissolution of partnership firm. It does not deal with a situation like the present where, by an interim direction on equitable considerations, one of the partners has been directed to pay certain amounts to the other.

30. In my view, learned counsel for the respondent is right in contending that the scope of interference by a court in an interim direction issued by an Arbitral Tribunal is also limited. The Arbitral Tribunal has taken an equitable view taking into account the status of capital investment of the two groups, their respective withdrawals, the profits earned by the firms in the past few years and the fact that admittedly the businesses of the three partnership firms have been brought into the fold of the closely held private limited company wherein the appellants have a majority and they claim majority shareholding of 98% shares (their claim of shareholding before this court in the earlier proceedings was 70%).

31. In view of the aforesaid discussion, I see no merit in the present appeal. I hold that the interim directions issued by the Arbitral Tribunal are not contrary to law and, in particular, to Sections 48 and 46 of The Indian Partnership Act, 1932 or to the agreement of the

parties. The grant of interest on the capital investment of the respondents is as per the partnership deed executed between the parties. The interim directions issued by the Arbitral Tribunal in the facts of the case, are fair, reasonable and equitable. I, therefore, reject the present appeal with costs of Rs. 25,000/-.

February 01, 2007 VIPIN SANGHI
aruna/spg JUDGE